

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

KERN HIGH SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH NO. N2006100372

DECISION

Richard M. Clark, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this matter on November 30, 2006, in Bakersfield, California.

Attorney Stacy Inman represented petitioner Kern High School District (District). Patricia Young, the District's coordinator for special education, and Dr. Steve Moyer, manager for special education for the District and Director of the Kern High School District Special Education Local Plan Area (SELPA), attended the hearing on behalf of the District.

Attorney Cathy Greco appeared on behalf of respondent (Student). Jackie Goldman, educational advocate, and Student's mother (Mother) attended the hearing on behalf of Student.

The District filed a request for a due process hearing on October 10, 2006. Sworn testimony and documentary evidence were received at the hearing on November 30, 2006. Closing arguments and closing briefs were heard and submitted on November 30, 2006, whereupon the record was closed and the matter was submitted for decision.

ISSUE FOR HEARING

Is Student entitled to receive special education services from the District?

CONTENTIONS OF THE PARTIES

The District contends that Student is not a resident of the District but is a resident of the Santa Barbara High School District (SBHSD), the district where her parents reside, and that, therefore, the District is not responsible to provide Student with special education services. The District contends that the residency statutes found in California Education Code¹ sections 48200 and 48204 apply to this matter and that section 56156.4 does not apply. The District further contends that section 56156.4 is ambiguous on its face and that referring to the legislative intent and history of that statute reveals that it is a funding statute and not a residency statute. The District requests an Order that Student be deemed not to be a resident of the District.

Student contends that she was placed in a licensed children's institution (LCI) located within the District by a regional center which makes her a resident of the District pursuant to section 56156.4. Student further contends that section 56156.4 is not ambiguous but is a more specific statute than the general residency statutes listed in sections 48200 and 48204. Student contends that because the statute is more specific, it applies over a more general statute. Student seeks an Order directing that Student be deemed a resident of the District and that the District be ordered to immediately provide Student with special education services.

FACTUAL FINDINGS

1. Student is 17 years old and is eligible for special education services under the primary category of autistic like behaviors (autism) and also emotional disturbance. Pursuant to stipulated facts, Student is a child with exceptional needs as defined in the Individuals with Disabilities Education Improvement Act and the California Education Code.

2. Student is a client of Tri-Counties Regional Center, located in Santa Barbara County, California, and has been a client since 1993. Student is not and has never been subject to the jurisdiction of a juvenile court. The State of California contracts with Tri-Counties Regional Center to provide support and services for children and adults with developmental disabilities.²

3. Student currently resides at SAILS X (SAILS), a LCI located within the District. Student was residentially placed at SAILS by Tri-Counties Regional Center on July 1, 2006. Prior to July 1, 2006, Student's residential placement was at Devereux, a LCI and a non-public school (NPS) located within SBHSD, which closed on June 30, 2006. SAILS is a LCI with a current license issued by the State of California.

¹ All further statutory references will be to the California Education Code unless otherwise noted.

² See generally Welfare & Institutions Code section 4620 et seq., which provides the statutory scheme whereby developmental disability services are provided by non-profit "regional centers."

4. Student's parents reside in Santa Barbara, California, located within the SBHSD, where they have lived since Student was born. Mother contacted the District in early June 2006 and informed it that Student would be residentially placed at SAILS and requested that the District provide Student a NPS placement similar to her placement in SBHSD. Mother never enrolled or attempted to enroll Student in the District.

5. The District is located within the SELPA, and is the only district in the SELPA.

APPLICABLE LAW

1. The IDEA is designed to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE). (20 U.S.C. §1400(d)(1)(A), (B), and (C); Ed. Code, §56000.)

2. A "licensed children's institution" (LCI) means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. (Ed. Code §56155.5, subd. (a).) LCI includes a group home as defined by subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations. (Ed. Code §56155.5.) "Group home" means any facility of any capacity which provides 24-hour care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee. (Cal. Code Regs., tit. 22, §80001, subd. (g).)

3. Where individuals with exceptional needs are placed in a LCI by a regional center for the developmentally disabled, the "special education local plan area shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children's institutions ... located in the geographical area covered by the local plan." (Ed. Code §§56155, 56156.4, subd. (a).)

4. Barring exceptions, persons between the ages of six and 18 years of age are required to attend a school in which the residency of either the parent or legal guardian is located. (Ed. Code §48200). Under section 48204, subdivision (a)(1), a pupil placed in the boundaries of a school district in a regularly established LCI pursuant to a commitment or placement under Chapter 2 (commencing with section 200) of Part 1 of Division 2 of the Welfare and Institutions Code, is deemed to have complied with the residency requirements for school attendance in that school district. The Welfare and Institutions Code, commencing with section 200 et seq., provides for the protection and safety of children under the jurisdiction of the juvenile court. (Welf. & Inst. Code §202.)

5. The plain meaning of a statute controls and courts will not resort to extrinsic sources to determine the Legislature's intent unless its application leads to unreasonable or impracticable results. (*Nuclear Info. & Res. Serv. v. DOT Research* (9th Cir. 2006) 457 F.3d

956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.) “Under well-established principles of statutory interpretation, the more specific provision [statute omitted] takes precedence over the more general one [statute omitted]. [Citations omitted.] To the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute.” (*Salazar v. Eastin* (1995) 9 Cal. 4th 836, 857.)

DETERMINATION OF ISSUE

Student is a resident of the District and is therefore entitled to special education services from the District.

As stated in Factual Findings 2 and 3, and Applicable Law sections 2, 3, and 5, a more specific statute covering the same issue must be interpreted as an exception to a more general statute. Here, section 56156.4 acts as an exception to the general residency statutes found in sections 48200 and 48204. Further, as stated in Applicable Law section 5, the language of sections 56155 and 56156.4 is not ambiguous. Therefore, resort to the legislative history of those statutes is not necessary. Because Student is a client of a regional center and has been placed in a duly licensed LCI located within the District, which is its own SELPA, Student is a resident of the District. Therefore, Student is entitled to have special education services provided by the District.

ORDER

The District must immediately provide Student with special education services.

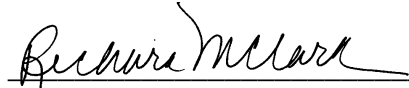
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on all issues heard and decided.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code, §56505, subd. (k).)

DATED: December 7, 2006



RICHARD M. CLARK
Administrative Law Judge
Office of Administrative Hearings
Special Education Division